Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

COMMENTS OF VIRGIN MOBILE USA, LLC

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February 28, 2003

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EXECUTIVE SUMMARY

Virgin Mobile USA, LLC ("VMU") urges the Commission to adopt a connection-based method for Universal Service Fund ("USF") collections if, and only if, the Commission adopts an "equitable contribution" system, rather than a "minimum contribution" system. Such a plan must be predicated on ensuring reasonably equitable assessments, based on average interstate revenues, on all fund contributors, not on giving preferential treatment to IXCs, whose chief complaints about the USF system have already been remedied.

"Equity" may not be important to carriers that pass along USF assessments to customers, often with a profit-generating mark-up. A carrier such as VMU, however, that offers user-friendly, no-surcharge, all-inclusive pricing, is acutely sensitive to the adverse impact of unfairly shifting the burden of USF contribution to its consumer customers, many of whom are low volume users who never make an interstate call from their mobile phones.

The minimum contribution system proposed is a step forward for USF reform in that it at least requires "minimum" USF contribution from interstate interexchange carriers—an improvement over most of the past connection-based plans. The minimum contribution approach falls short, however, of complying with the key statutory requirement to collect USF contribution *equitably* from all providers of interstate telecommunications. A plan that allows IXCs and other minimum-assessed carriers to contribute but a small, insignificant fraction of their revenues, and that therefore forces other carriers to contribute more than their fair shares to the fund, is not acceptable under the statute. The other connection-based plans proposed are even more unfair and similarly contrary to the Act.

Instead, VMU proposes that the Commission reform its connection-based proposal to ensure reasonably equivalent, and thus equitable, contributions from both those carriers contributing under the connection-based system (LECs and wireless) and those carriers

contributing using the revenue-based system (IXCs). VMU proposes that this equity should be achieved through decreasing the contribution per wireless handset to \$.30. This number takes into account that wireless revenue is not, as a statistical matter, primarily derived from interstate traffic, unlike IXC revenues, which comprise the greatest percentage of revenue from interstate traffic. Further, a \$.30/per handset wireless contribution rate recognizes that a wireless handset, unlike a wireline phone, has no permanent access, or "connection," to the interstate network.

In implementing any connection-based proposal, and to ensure that contribution is reasonably tied to interstate revenues, the Commission must also limit contribution-assessable "connections" of pre-paid wireless providers to only those handsets used during a given month to make an interstate call. Absent such an approach, low-volume users that never make interstate calls will unfairly subsidize those with high levels of interstate usage. This revised definition will also partially ameliorate the impact on pre-paid carriers of paying multiple monthly connection charges from the same, often exclusively intrastate, revenues generated by customers that can afford phones only to use for emergency purposes.

Further, to avoid anti-competitive discrimination against resale carriers, the Commission should not assess contribution on wholesale revenues generated by sales to other carriers that make contribution on end-user sales. (VMU does not oppose continuation of the current practice of requiring contribution from wholesale revenues to the extent the wholesaler has knowledge that contribution will not be made by the wholesale customer upon resale to end-users.) This double-taxation of resale not only is inconsistent with the practice of not levying excise taxes on sales for resale, but also it handicaps the ability of resale to contribute to a robust competitive marketplace. The impact is particularly egregious in the wireless context, where spectrum limitations restrict the number of facilities-based carriers to an oligopoly. The USF contribution regime should not jeopardize the public's access to the pricing and service innovations non-licensee carriers such as VMU have brought to the marketplace. Nor, under a USF regime that requires equitable contribution from all carriers, including IXCs, should there be any necessity for such double-taxation.

Unless the Commission can adopt a connection-based proposal based on equity, then the Commission should retain its current revenue-based system, and make permanent the interim changes adopted recently. These changes, most notably the increase in the wireless "safe harbor" contribution base and the elimination of surcharge "markup" by carriers, will go a long way towards preserving the sustainability of the USF system in its present form.

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COMMENTS OF VIRGIN MOBILE USA, LLC

I. INTRODUCTION AND OVERVIEW

Virgin Mobile USA, LLC ("VMU"), by its undersigned counsel and pursuant to the Commission's Report and Order and Second Further Notice of Proposed Rulemaking released December 13, 2002 ("FNPRM"),[1] hereby submits its Comments in the above-captioned proceedings.

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[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *et al.*, *Further Notice of Proposed Rulemaking and Report and Order* (rel. Feb. 26, 2002) ("*FNPRM*").

A. About Virgin Mobile USA, LLC

VMU is a relatively new entrant in the American telecommunications market, offering prepaid commercial mobile radio services ("CMRS") as the first Mobile Virtual Network Operator ("MVNO") in the United States. VMU is a joint venture between Sprint Ventures Inc., an affiliate of Sprint PCS, whose technologically advanced digital wireless network provides the backbone for VMU's wireless service, and the Virgin Group, a diversified global conglomerate comprised of over 200 companies – including an international airline, a recording label, and an entertainment superstore – uniformly committed to delivering great quality and value to their customers. VMU's rapid marketplace acceptance demonstrates that its entry into the U.S. wireless market has brought customers great service, value, specialized content, and innovative services welcomed by the youth market. A key feature of the VMU value proposition is pay-as-you-go pricing: customers pay only for the service they use.

B. Summary of Virgin Mobile USA Comments

VMU supports the Commission in its reform efforts to ease the extensive administrative burdens imposed by the current Universal Service Fund ("USF") assessment and collection system and minimize additional costs to carriers and consumers. VMU offers these comments to address several key concerns that VMU has with the FNPRM's proposal for a new "minimum contribution" system for assessing contributions to the interstate USF.

VMU's paramount concern is the inequities resulting from the current connection-based proposals' focus on preferential treatment of interexchange carriers ("IXCs"). One proposal's name – the "minimum contribution" plan – is revealing as it requires only minimal contributions from IXCs, although the interexchange long distance sector accounts for the largest portion of interstate telephony revenues, the revenues that are jurisdictionally assessable for interstate USF purposes.

The interstate IXCs requested that the Commission examine connection-based and other new approaches to USF assessments, and the Commission addressed their concerns in interim decisions. In establishing a new regime for the USF assessment system, therefore, the Commission should focus on ensuring equitable treatment of all carriers and their customers rather than relief for IXCs. To do so, the Commission must make the assessments equitable across industry sectors by ensuring that all sectors, no matter how assessed, pay a reasonably comparable percentage of their respective interstate revenues into the USF fund.

VMU believes that a connection-based assessment scheme is feasible if the Commission's proposal is modified to become an "equitable contribution" system specifically designed to incorporate elements that ensure equitable treatment of all types of carriers. The connection-based plans advanced to date, however, should be rejected because they unfairly force other carriers to subsidize USF obligations of IXCs, do not distinguish between wireless and wireline carriers, and do not properly define a "customer" for prepaid wireless providers. In addition, these plans would effectively double-tax resold services. With the changes recommended by VMU, however, the Commission can design an equitable connection-based collection method that would be a workable solution to the USF collection problem.

Given the Commission's apparent interest in implementing a connection-based assessment regime, VMU recommends a number of changes to the FNPRM's modified connection-based plan to transform it from a "minimum contribution" plan that gives preferential treatment to IXC revenues to an "equitable contribution" system that is fair to all carriers and their customers. VMU believes that the appropriate equitable contribution rate for wireless carriers should be $.30 per handset. This rate takes into account average industry revenue for wireless companies relative to telecommunications companies, as well as the intermittent nature of wireless connections. Further, a refining of the definition of a connection to include actual handsets used will create a more equitable contribution system. In the event that the Commission cannot agree on an equitable connection-based contribution system, it should adopt on a permanent basis the existing revenue-based plan as modified by the interim orders. These rules levy the same contribution percentages across all industry sectors and are therefore equitable.

Regardless of the approach it adopts, the Commission must (i) require IXCs to contribute their fair share, and (ii) reject the proposed USF contribution assessment on revenues paid by resellers to wholesalers for underlying services because resellers contribute to USF on end-user revenues derived from the resale of those same underlying services. Continuing to avoid "double taxation" of these revenues is consistent with the approach taken for excise taxes and ensures that non-licensee wireless service providers[2] such as VMU can continue to compete aggressively in the wireless market.[3]

II. THE ORIGINAL JUSTIFICATION FOR A CONNECTION-BASED SYSTEM FOR COLLECTION OF USF THAT FAVORED IXCs HAS BEEN ADDRESSED BY THE COMMISSION.

In an era of declining revenues, forward assessments based on backwards-looking reporting without true-ups and substantial lag periods required IXCs to make significant USF payments based on revenue levels they did not achieve. The IXCs passed these costs to customers by levying USF surcharges in excess of the required Universal Service Administrative Company ("USAC") percentage. This practice became a new source of revenues for the IXCs

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[2] As noted above, VMU is a mobile virtual network operator ("MVNO"). MVNOs resemble wireless resellers in that both types of providers purchase airtime at wholesale rates from facilities-based wireless licensees for resale to retail customers. MVNOs, however, focus more on brand development to appeal to target niche markets than do traditional resellers. The FCC's most recent CMRS Competition Report estimates the resale sector to account for approximately 5 percent of all mobile telephone subscribers. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 17 FCC Rcd 12985, 13025 (2002).

and predictably led to consumer complaints. While both the IXC revenue gap and the excessive consumer surcharges and related complaints made USF collection reform an urgent issue, the Commission addressed both issues in orders that revised the reporting period and requirements to more closely approximate actual revenues, prohibited USF assessment mark-ups, and allowed IXCs to add administrative surcharges so long as they were not denominated as USF assessments. There is no longer any justification for giving IXC revenues preferential treatment, or forcing customers of wireless carriers such as VMU to subsidize the USF obligations of long distance service providers.

It may be appropriate to adopt a connection-based mechanism, but such a system must be fair to all industry sectors and their customers. Although interstate long distance revenues were previously treated unfairly, the Commission has remedied the inequity in its recent rulemaking. The proper objective should not be to favor IXCs and adopt the minimum possible long distance sector contributions that might possibly survive judicial review, but to fund the USF in a manner that is just and equitable to all carriers and customers.

III. A CONNECTION-BASED COLLECTION METHODOLOGY MUST INCORPORATE AN "EQUITABLE CONTRIBUTION" COMPONENT TO BE FAIR AND LAWFUL.

A. The Mandatory Contribution Proposal Corrects Significant Deficiencies of the Original CoSUS Plan, but Must Become an "Equitable Contribution" Plan rather than a "Minimum Contribution" Plan.

1. Analysis of Inequities of the Proposed Minimum-Contribution Approach

The original Coalition for Sustainable Universal Service ("CoSUS") plan was fundamentally flawed because it did not collect revenue from IXCs, dial-around services, or

[3] The other connection-based proposals described in the FNPRM, like the original "CoSUS" plan, do not provide a fair and equitable manner in which to collect contribution from all providers of interstate telecommunications as required by the Act and, thus, all of these proposals should be rejected out of hand.

prepaid wireline providers, exempting a significant portion—and possibly the most significant portion—of interstate traffic.[4] As noted by numerous commenters, including VMU, exempting such a significant portion of the revenues of interstate carriers would be a violation of the Act's "mandatory contribution" requirement.[5]

The IXCs' revised mandatory minimum contribution approach starts from the outdated premise that IXCs should be given preferred treatment under the USF regime, their revenues assessed on only a token basis, merely to comply nominally with the statutory requirement that all carriers contribute to USF. The new "minimum contribution" proposal attempts to correct for the exemption of IXC revenues by assessing carriers that lack end-user connections at a minimal rate of just one percent of their interstate revenues.[6] Designed solely to bolster the legal underpinnings of a connection-based approach, this "minimum" contribution would not constitute substantive compliance with the statute. Instead, it would represent a glaring preferential loophole unjustifiably benefiting one segment of the telecommunications industry.

As detailed in the FNPRM, all carriers would pay One Dollar per connection per month, which would yield vastly different interstate revenue contribution percentages for different industry sectors. An analysis of industry data concerning the average monthly bill of a wireless carrier demonstrates the disparate and discriminatory treatment that would result from the current proposal. The average monthly bill of a wireless customer is $47.42.[7] Levying the same One Dollar per connection on both a wireless handset and a local exchange connection results in an average collection rate of more than two percent of the wireless customer's *total bill*, nearly one-

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4 *Further Notice of Proposed Rulemaking and Report and Order,* CC Docket 96-45, (rel. Feb. 26, 2002) at ¶ 36.

5 47 U.S.C. § 254 (d).

6 *FNPRM* at ¶ 78.

7 CTIA's Semi-Annual Wireless Industry Survey, 2002.

third more than the percentage imposed on a LEC customer,[8] and *twice* the minimum percentage to be assessed on IXC's *interstate revenues*. Assuming that as much as 30 percent of the wireless revenue is from interstate telephony, then only $14.22 a month is wireless interstate revenue. A One Dollar connection-based fee charged on handsets would thus be seven percent of interstate revenue, or a whopping 700 percent of the "minimum" rate at which IXCs would pay on their interstate revenue. Under the minimum contribution plan, carriers with connection-based charges not only pay a much higher proportion of their revenues in Universal Service fees, but they pay an even greater relative percentage of the interstate revenues subject to USF jurisdiction under the Act.[9]

2. The Creation of an "Equitable Contribution" System Should Be the Primary Goal.

A connection-based system that is to be reasonably fair to all types of carriers would not be impossibly complex. A wireless connection fee of $.33 per connection (assuming that 30 percent of the provider's total services revenues are interstate[10]) would approach neutrality on a revenue percentage basis. Based on the average bill of $47.42, the assessment would represent just under two percent of the wireless provider's interstate revenues, and the IXC contribution rate could be raised to the same level. If the "minimum contribution" becomes an "equitable

8 *See Statistics of Common Carriers*, 2001, Table 5.8. This chart identifies the average monthly connection charge for a business customer as $67.84 per month, which does not include usage, taxes, or related fees. VMU believes that business revenues represent a relevant comparison, as many residential customers are subsidized pursuant to many state PUC regulations. Moreover, this rate excludes high usage customers as well, since high usage business customers would likely seek dedicated high capacity connections which would be assessed differently under many of the connection-based USF plans.

9 During the previous phase of the proceeding, wireless carriers submitted information that wireless carriers have, on average, between 25 percent and 30 percent of interstate usage. VMU's interstate usage actually below the lower end of this range, or below it. It should also be noted that the revenues of a carrier such as VMU offering customer-friendly "all-inclusive" pricing also cover, without surcharge, state USF and E911 contributions.

10 This is based on the Commission's recent interim order, establishing a revised "safe harbor" interstate revenue percentage at 28.5 percent, and rounding for convenience. VMU's current figures indicate, in fact, that this safe harbor is set at a level actually higher than Virgin's interstate revenue percentage.

contribution" assessment, IXCs and other non-connection-based contributors would pay approximately the same percentage of their interstate revenues to the USF as carriers contributing on a per connection basis. Because only 30 percent of the wireless provider's revenues are interstate, each $.05 increase in the connection fee represents a one-third of a percent increase in the fee on the average wireless bill, which should require the same percentage increase by IXCs and other revenue-percentage contributors to maintain even a semblance of fairness.[11]

3. Wireless Connections Are Different From Traditional Wireline Connections.

The above approach would be a great improvement over other proposals, but it would still overcharge wireless carriers because it erroneously assumes that all "connections" are equivalent. They are not. Unlike a local exchange carrier ("LEC") loop, which is a full-time, dedicated physical connection between the customer's premises and the central office, the wireless "connection" is not full-time but occasional; intermittent, not dedicated. For wireless

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[11] VMU notes that this quantitative analysis differs significantly from that found in the FCC's Staff Study Paper (rel. Feb. 26, 2003) in this docket. VMU believes that the quantitative analysis in the Study Paper is based on several flawed premises and assumptions but has not had sufficient time for a thorough analysis of the paper prior to filing these comments. VMU will likely comment on its concerns with this Study Paper separately, at a later date. Even a brief glance at the Study Paper, however, reveals that the connection-based proposals advanced to date discriminate against residential consumers and their carriers. Under the current revenue-based model, the Commission assumes the average contribution by wireless carriers serving residential customers will rise from a current $.45 to $.79 per handset in 2007, while IXC contributions will decline from $.83 to $.64 per household. Under the "minimum contribution" proposal, the Commission estimates that wireless carriers will pay a flat rate of $1.05 per handset by 2007, yet projects that per residential customer IXC contributions will drop from the current $.83 to $.03 through 2007. Minimum contribution indeed! The unfairness of this approach is thus evident. Similarly unfair is the SBC/Bell South plan, for which the Commission projects a $.72 contribution by IXCs, yet a whopping $1.45 per handset contribution for wireless carriers in 2007. To compound the problem, the Commission then assumes that a household will only have one wireless phone in calculating the average household contribution to the USF fund. However, wireless service is increasingly used to allow family members to stay in touch (particularly locally) wherever they are, requiring multiple handsets per residence. As a result, the average household USF contribution could skyrocket, without a substantial increase in income, much less interstate income, for the wireless carriers (many of whom offer special family plans). In this situation, the per handset charge would become analogous to charging a separate "connection" for each physical telephone attached in a consumer's home. If the Commission is truly interested in determining the impact on residential customers of its proposed changes, it must also recognize that, unlike business customers, residential subscribers are typically lower volume and lower revenue. Thus, to truly judge the effect of these changes on the average wireless consumer, the Commission must use the residential, and not business wireless subscribers as the baseline.

carriers, and even more so for prepaid wireless carriers, the "connection" is just the *possibility* of a connection. Absent a reduction in the wireless connection assessment, or an increase in the "minimum contribution" to seven percent, the USF burden is unfairly borne by wireless carriers.[12]

Wireline customers have portions of the network dedicated to and reserved for their exclusive use all the time, wireless customers share their network connections and only access the network intermittently. If the underlying basis for assessing wireless carriers is based on connections, there should be a discount applicable to wireless carriers because their customers lack dedicated network connections. Wireless customers pay not for a constant connection but for mobility.

If the underlying theory of the connection–based approach is to provide a piece of the network for those who lack it, and to do so by taxing those who use it, then full-time use should be assessed at a higher rate than shared, interrupted use. Indeed, various proposals already assess high-capacity lines at a lower rate per voice circuit, in implicit recognition of their sharing of such facilities as ports. For equity, wireless connections should be assessed at half the rate of the full-time wireline connections.

4. A Connection-Based Approach Could Serve as an Equitable Contribution Regime.

There is no justification for adoption of a system designed to give preferential treatment to IXC revenues. At the same time, the Commission can modify its proposal and adopt a connection-based approach that is reasonably fair to all industry sectors. With a fundamental

[12] In reality, of course, much of the increase will be borne by consumers, as carriers and the Commission have often been complicit in allowing the USF contribution rates to increase radically, knowing that consumers, and not carriers will often be the ultimate payor of any collection. VMU, with its no surcharge pricing, attempts to break that complicity—and related customer frustration. Yet, any true inequity in the USF collection makes it increasingly difficult for other carriers to follow this consumer-friendly pricing model.

change in focus from preferential treatment of IXC revenues to equitable assessment of all industry sectors based on respective interstate revenues of various industry sectors, the Commission can create a contribution system more likely to withstand a challenge based on a violation of Section 254(b)(4)'s requirement to establish a fair and equitable collection method.

As noted in detail above, the "minimum contribution" plan fails to take into account disparities between industry sectors in their respective contribution rates. The proposal should require that USAC attempt to equalize the contributions in this manner.

Starting from a base wireless contribution rate of $.33 (derived from differences in average revenue), after adjustment for such non-quantitative factors as the intermittent nature of wireless connections, VMU would support a wireless contribution rate of $.30 as reasonably fair to wireless carriers. At the same time, IXCs and other carriers that would contribute under the revenue percentage contribution approach should have their revenue percentage contribution increased to more closely equate to the contribution rate paid by carriers contributing based on connections. The result would be three contribution rates that would yield relative parity as to contributions as a proportion of interstate revenues. While such an approach is modestly more complex, the result would be a sustainable and more equitable assessment of USF contribution.

B. Further Changes in the Definition of "Connection" Are Necessary.

VMU's pay-as-you-go service is user-friendly without surcharges, designed to be flexible enough to serve the lifestyles of its market. It is, therefore, essential that the Commission carefully define the term "connection." Connections must not be presumed to exist when there is no interstate usage or revenue to the carrier, as low volume users with no interstate usage will subsidize the service of high volume interstate consumers.[13] These users are likely to be less

[13] Even under this approach, a carrier such as VMU might, for example, end up paying three monthly USF connection charges on the same revenues, none of which might be interstate. In the event that a customer has a

affluent than high-usage customers. A "connection" for interstate USF assessment purposes must therefore be limited to a "connection" actually used to make at least one interstate call in a given month.

In the first phase of this proceeding, the Commission adopted an overbroad definition of "connection" for prepaid service that was merely the ability, based on a consumer balance, to place or receive interstate calls. VMU believes that a more precise definition that would count only those customers who actually made or received an interstate call during the contribution period (month) is the better approach. While VMU acknowledges that all wireless phones may be *able* to make interstate calls, low-usage customers, including those who use wireless phones only for emergencies or extraordinary circumstances, would tend only to make and receive local calls on their wireless phones. Defining contribution-assessable handsets as only those of customers who actually make interstate calls in a given month would more closely limit contribution to those consumers who actually contribute to interstate revenues—the proper scope of the rulemaking. Such a result is consistent with the Commission's recent rule change requiring that USF surcharges be limited to the respective USF assessment related to the customer.

This determination is also consistent with the fund's overall redistributive statutory aim. Because consumers who do not make interstate calls are more likely to be low-income or low usage, exempting them from connection-based Universal Service is an appropriate result. VMU's target customers are generally younger and less affluent than the public at large, and these customers have lower volume and lower revenue per user than average postpaid customers.

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carry-over balance, but does not use his wireless phone, VMU would be assessed a connection-based charge every month until the account became "inactive" under VMU's terms of service. Low-volume users with carry-over balances from month to month are likely to use wireless phones only for intrastate calls and, therefore, they may generate no jurisdictionally assessable revenues in even one month in which the balance is available.

A modification to the definition of an assessable handset would minimize the regressive effects that a connection-based system would have on low usage consumers. Even with the narrower definition, low volume users would still subsidize others, and prepaid carriers would pay more than they otherwise might.

C. Assessment of USF on Wholesale Revenues from Resellers Serving End-Users Injures Competition and Double Taxes the Same Services.

The Commission should reject proposals to assess USF on wholesale sales.[14] In addition to the disparate treatment of carriers that contribute under the minimum contribution approach and those that pay per connection, the "minimum contribution" on wholesale sales for resale to end users requires two contributions for the same services by both wholesalers and resale carriers.

This proposal may have been intended to partially compensate for the loss of USF funding attributable to requiring only minimum contributions from IXCs, but it would place a disparate burden on resellers with predictably anti-competitive consequences. If a wholesale carrier is assessed a Universal Service charge, it would undoubtedly pass that amount (plus, perhaps, a surcharge) through to its resellers. The resellers would face a higher marginal cost and would be forced to choose between raising rates in a highly competitive industry or absorbing the charge and the resulting decrease in profit margins. If the resellers raise rates or pass through the second assessment as a line-item charge to customers, consumers using resold services, who are often younger and less affluent than those of licensed carriers and may be precluded from the postpaid services offered by facilities-based carriers that require credit qualifications, would bear a much higher proportion of USF contributions.

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[14] VMU does not oppose continuation of the current approach under the revenue-percentage system that requires carriers to make USF contributions from sales to all end users, including resellers that do not make USF contributions. It opposes only the double taxation of wholesale revenues based on sales to customers such as VMU that the wholesaler knows will contribute to the USF based on their own end user revenue.

The proposal would be harmful to resellers and consumers. Such a result is clearly contrary to the most basic aims of the USF system, and the Act in general: encouraging availability of telecommunications services and competition in the provision of these services.[15]

The rapid marketplace acceptance of the VMU pay-as-you-go products, as evidenced by subscriber growth and the efforts of other CMRS licensees to match aspects of VMU's model, indicates that the public desires a broad array of wireless services and products targeted to the widely varying needs of consumers. A USF proposal that is the functional equivalent of double taxation of USF for resale revenues would penalize non-facilities-based carriers that address critical sectors of the wireless market and thereby limit competition and consumer choice.[16] The fair solution to concerns about USF fund shortfalls is, as discussed above, to ensure that all industry sectors contribute to the USF on an equitable basis, not to double-tax resellers.

IV. IF THE COMMISSION DOES NOT ADOPT THE EQUITABLE CONTRIBUTION PLAN DESCRIBED ABOVE, MAINTENANCE OF THE EXISTING REVENUE-BASED SYSTEM IS THE BEST ALTERNATIVE.

Although VMU believes that the equitable contribution approach may have greatest potential for long-term stability of the USF system, absent adoption of this equitable contribution plan, the Commission should retain a modified revenue-based system with certain modifications. While not without its faults, the revenue-based system as modified could become an equitable USF collection regime. With the interim revisions recently adopted by the Commission, the Commission has taken the necessary steps to preserve the USF system for he foreseeable future, while addressing the issues of concern raised by the IXCs.

15 47 U.S.C. § 254.

16 The result of such anti-competitive double taxation is especially egregious in the wireless context. When spectrum limits constrain the number of facilities-based carriers to an oligopoly, as in the wireless sector, resale competition is essential to provide market discipline and promote consumer choice of price and service options. That some facilities-based carriers have begun copying aspects of the VMU model demonstrates that continued competition from MVNOs such as VMU is an important driver for wireless industry innovation that should not be handicapped by double USF assessment of resale.

Raising the wireless safe harbor from 15 percent to 28.5 percent, to approximate the actual interstate percentages of the entire wireless industry (though higher than VMU's interstate revenue percentage), will have the effect of nearly doubling the contribution-eligible revenue received from wireless carriers that utilize the safe harbor. The increase in the contribution base will likely contain the growth in the contribution factor by increasing the size of the denominator in the contribution base calculation ratio.[17] As long as the Commission and USAC work to contain the growth of demand on the Universal Service system,[18] the contribution factor should stabilize or even decline.

The Commission's rule changes allowing carriers to contribute based on projected, collected revenue, and allowing carriers to pass through to customers amounts in excess of the actual contribution rate so long as not denominated as USF contributions, have addressed IXC concerns while ensuring that consumers are fully informed as to the amount of USF-mandated contributions. By eliminating the requirement that carriers use data that is six to nine months old as the contribution base, carriers can be more assured that the funds they actually collect from customers will cover the immediate costs of the USF contribution.[19]

The specific prohibition on misidentifying to customers amounts in excess of the actual USF contribution rate will further strengthen the USF system.[20] Consumer concerns about cost

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17 *See,* 47 C.F.R. § 54.709 (describing the formula for establishing the contribution rate as a ratio of USF demand over USF contribution eligible revenue).

18 While reforms to the demands placed on the universal service system exceed the scope of this proceeding, VMU continues its support of reforms to the demands on universal service support as a means of further controlling the virtually unchecked increases in the contribution rate that have been of recent concern.

19 By switching to a projected revenue system, the Commission virtually ensures that every contributing company will be subject to an annual true-up. Because the annual true-up takes an average of the two highest contribution rates to collect on underpayment and the two lowest contribution quarters to offer refunds, the net result will be a marginal increase in the effective rate of contribution actually paid by carriers.

20 Questions concerning the survivability of the fund cannot be finally addressed prior to the Commission's resolution of issues of bypass and contribution exemption for VoIP and similar services. Such exemption turns on the core question of whether VoIP services will be considered telecommunications services. Once the issues raised

increases and confusion over the myriad changes will subside, as carriers can no longer use the USF surcharge as a profit center without stating that additional surcharges are unrelated to USF.[21] Thus, the Commission can be assured that future increases of USF surcharges borne by consumers will be caused solely by an increase in the actual USF contribution rate approved by the Commission to fulfill the requirements of the Act and that consumers are fully informed as to the source of administrative charges.

The existing revenue-system, with recent modifications, is at its heart equitable. Carriers pay based upon the level of interstate revenue they generate. While VMU supports an equitable contribution method that takes the best of both the connection-based and the revenue-based systems, the pure revenue system is indisputably equitable in that all carriers contribute federal USF based upon the benefits they draw from the interstate telecommunications system.

V. OTHER ALTERNATIVES, INCLUDING THE TRANSPORT/ACCESS PLAN AND THE ASSESSMENT BASED ON TELEPHONE NUMBERS, SHOULD BE REJECTED.

A. The Transport/Access Proposal Treats Wireless Carriers Unjustly.

The proposal to assess USF contribution separately on transport and access is egregiously flawed. While this proposal (originally created by RBOCs Bell South and SBC) appears to eliminate a major deficiency in the original CoSUS connection-based plan—the exemption of IXC income from contribution—the proposal would place disproportionate and unjustified burdens on wireless carriers. This plan treats all telecommunications as comprising two components: access and transport.[22] It attempts to graft the traditional regulatory baggage

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in Dockets such as WB Docket 03-45 are resolved, the Commission will be in a far better position to evaluate the size of the available pot.

21 VMU, for example, which does not send bills with USF surcharges, has never had a complaint about USF issues.

22 FNPRM at ¶ 86.

associated with wireline service onto wireless services. Nearly anyone who has had contact with the industry, from employees of carriers to regulators and even consumers, recognize that wireline phones require two products—local and long distance service—to place calls universally. Wireless service, on the other hand, offers mobile connectivity and is increasingly priced without distinguishing between local and long distance. Consumers understand that they must choose their local and long distance wireline carriers separately, even if they select the same carrier for both services.[23] Wireless service may technically provide something analogous to access and transport to its consumers; however, the two are not sold independently—a consumer cannot select a different "carrier" for the local wireless service.[24] Rather, transport and access are one and the same for wireless; there is no dedicated access loop like that provided between the customer's premises and the LEC central office, exclusively reserved and always available for the specific customer.[25] A wireless network is accessed only when there is transport.

Wireless services are typically sold as integrated all-inclusive packages in which access is inseparable from transport. Imposing a separate assessment on both "access" and "transport" is therefore punitive. As described more fully in Section III.A.4 above, the traffic patterns and usage of wireless phones warrant a lower, not higher, per connection charge than that which should required from wireless carriers.

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23 As would be the case if the consumer selected a company that is both a CLEC and an IXC to provide service, or, increasingly, an RBOC and its long distance affiliate after Section 271 approval.

24 Indeed, the Act itself does not require that wireless carriers provide equal access. That section states: "A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. ..." 47 USC § 332(c)(8).

25 In some instances, when the LEC deploys a digital line carrier, the customer's loop may be multiplexed at a remote terminal and carried to the central office as a circuit on a T-1 or other dedicated circuit, but the customer still has a dedicated, unique loop.

B. Contribution Based on Telephone Numbers Fails to Collect from all Carriers.

The proposal to assess USF based on telephone numbers is also deficient, for it too fails to reasonably collect from all telecommunications carriers. If the Commission only assesses USF based on telephone numbers, then carriers without numbers, including IXCs, prepaid providers, or dial-around carriers would all be exempt from contribution, either explicitly or because any contribution they would make would be considered *de minimis*. The Commission has an obligation under that Act to create a USF collection methodology that has a reasonable opportunity for collecting Universal Service from all carriers that are subject to the Mandatory Contribution requirements of Section 254(d).[26] A justifiable system requires equitable assessment with respect each sector's revenues from interstate traffic.

If modified to include a form of equitable contribution as discussed more fully in Section II above, however, the telephone numbers-based proposal could become an equitable collection method. Absent this modification, major providers of interstate telecommunications, from IXCs to private line providers that offer interstate telecommunications services without telephone numbers, will largely evade responsibilities for USF contribution.[27] If the Commission were to amend this proposal to include a provision to assess USF on all providers of interstate

[26] While VMU acknowledges that the Commission's jurisdiction over the regulation of telephone numbers is clear, the requirements of Section 254 of the Act does not authorize or require the Commission to collect from holders of telephone numbers, but rather from carriers. Thus, the use of telephone numbers as the basis of assessment of USF is appropriate if, and only if, the Commission can demonstrate that numbers are an appropriate proxy for interstate telecommunications carriers. Instead, the Commission appears to be focusing on telephone numbers as a proxy for "connections." Yet, as noted frequently, complete reliance on connections as the basis for collections ignores the largest portion of interstate carrier revenues—IXCs.

[27] Moreover, certain advanced services such as Voice over Internet Protocol ("VoIP") might also be subject to future contribution. In the Biennial Review Docket, the Commission is considering whether it should exercise its permissive authority and assess contribution on other non-interstate telecommunications services. Such a proposal will be moot if the Commission bases its USF contributions solely on telephone numbers. Thus, to the extent that the Commission continues to address the permissive contribution issues in the Biennial Review Docket, further reforms to create a connection-based proposal should perhaps be halted.

telecommunications—including carriers that do not utilize telephone numbers—then this proposal could serve as a useful collection model.

VI. CONCLUSION

VMU supports adopting a connection-based approach provided that it requires equitable, rather than minimal, contributions by all industry sectors. Like the original CoSUS plan, the "minimum" contribution plan is unacceptable, essentially exempting IXCs and other significant portions of the industry. Based on the Commission's proposal to combine a traditional revenue-based collection approach with a connection-based system to broaden the contribution base across a wider group of carriers, however, an "equitable contribution" plan can be a sustainable approach to contribution to the USF system.

An equitable contribution system must properly equalize the effective collection rates across the industry despite utilizing a distinct contribution regime deemed most effective for each sector: a connection-based approach for LECs and wireless, and a revenue-based approach for IXCs. The system cannot double tax services and thereby impose an anti-competitive burden on resellers. It must distinguish between full-time (wireline) and intermittent (wireless) connections to the network, and it must only levy contributions on connections that are actually used to generate interstate revenues.

A wireless connection charge of $.30 would be effectively revenue neutral (assuming that 30 percent of the carrier's total services revenues are interstate). This rate reflects both quantitative differences in the average revenue between wireless and wireline "connections" and a slight adjustment for qualitative differences between the two services, similar to (but in fact lower than) the reduced-contribution adjustment afforded high-capacity lines.

If the Commission is unable to agree upon a modification of the minimum contribution proposal, VMU urges the Commission to retain the revenue-based system as modified by the recent Commission order. The changes in the rules effected by that order, including the higher wireless safe harbor, the limitations on customer pass-through of above-USAC mandated contribution rates, and the use of current rather than historical revenue data, will assist in the preservation and stability of the USF system. VMU also urges the Commission and USAC to take the necessary steps to limit the thus far unconstrained growth in the demand for USF subsidies.

VMU therefore recommends that the Commission adopt a USF contribution plan that incorporates the equitable assessment factors discussed above. Such a proposal would establish a fair and equitable regime for all interstate carriers that has limited anti-competitive effects and consistent with the requirements of the Act. Absent such modification, however, the Commission should make permanent its current revenue percentage contribution approach in lieu of adopting a contribution-based system that unfairly discriminates against wireless carriers and customers.

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February 28, 2003